Primary Data Center, board of trustees

Number: AGO 2012-37

Date: November 16, 2012

Subject:
Primary Data Center, board of trustees

Mr. Gerard T. York
General Counsel
Southwood Shared Resource Center/
Northwood Shared Resource Center
2585 Shumard Oak Boulevard
Tallahassee, Florida 32399-0950

RE: COMMUNICATIONS AND DATA PROCESSING - PRIMARY DATA CENTER - BOARD OF TRUSTEES - MINORITIES - MINORITY REPRESENTATION - whether board of trustees of primary data center is "decisionmaking and regulatory board" within scope of statue and must provide reports. ss. 282.203, 282.204, 282.205, and 760.80, Fla. Stat.; Part I, Ch. 282, Fla. Stat.

Dear Mr. York:

On behalf of Mr. John Wade, Executive Director of the Southwood Shared Resource Center, and Mr. Ronald Stewart, Executive Director of the Northwood Shared Resource Center, you have asked for this office's opinion on substantially the following questions:

1. Whether the board of trustees for the Northwood Shared Resource Center and the Southwood Shared Resource Center is the "appointing authority" for each of these primary data centers?

2. Whether each of these primary data centers has reporting obligations under section 760.80(8), Florida Statutes?

In sum:

1. The boards of trustees of the Northwood Shared Resource Center and the Southwood Shared Resource Center are the "appointing authority" for the "at-large" member of those boards.

2. As an "appointing authority," the boards of trustees of the Northwood Shared Resource Center and the Southwood Shared Resource Center appear to come within the scope of the reporting requirement of section 760.80(8), Florida Statutes.

Section 760.80, Florida Statutes, was enacted in 1994 with the expressed legislative intent

"to recognize the importance of balance in the appointment of minority and nonminority persons to membership on statutorily created decisionmaking and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. In

addition, the Legislature recognizes the importance of including persons with physical disabilities on such panels. Furthermore, the Legislature recognizes that statutorily created decisionmaking and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for Florida, and the selection of the best-qualified candidates is the paramount obligation of the appointing authority."[1]

The statute defines the term "minority person" to include African Americans, Hispanic Americans, Asian Americans, Native Americans, and women.[2]

Legislative history for CS/SB 340, enacted as Chapter 94-213, Laws of Florida, recognizes that "[n]umerous boards, commissions, councils, and committees are created by statute within the executive, legislative, and judicial branches of government." As examples of the types of boards and commissions within the scope of the statute, the Legislature identified the Board of Regents, the Public Service Commission, and the Florida Parole Commission.[3] As mentioned in the legislative history for CS/SB 340, which would become section 760.80, Florida Statutes, "[b]oards of trustees and commissions, by definition in ch. 20, F.S., are generally decisionmaking and regulatory bodies . . . ."[4]

The statute requires that, when appointing members to any statutorily created decisionmaking or regulatory board, commission, council, or committee of the state, the appointing authority should select those persons whose appointment will ensure that the membership of the board accurately reflects the proportion that each minority group represents in the state population represented by the board.[5] The composition of local boards should reflect the population of the area represented by the board as determined by the most recent federal census.[6] The statute provides:

"If there are multiple appointing authorities for the board, commission, council, or committee, they shall consult with each other to ensure compliance with this section."[7]

The statute requires that each appointing authority submit a report to the Secretary of State which reflects the number of appointments made during the preceding year from each minority group and the number of nonminority appointments in both numerical terms and as a percentage of the total membership of the board.[8] Each such report shall include details on the number of physically disabled persons appointed to these boards in the previous calendar year.[9] The report is to be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate.[10] The appointing authority is charged with designating "a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's race, ethnicity, gender, physical disability, if applicable, and qualifications" is available for public inspection.[11]

Thus, section 760.80, Florida Statutes, establishes state policy with respect to appointing members of statutorily-created decisionmaking or regulatory boards, commissions, councils, and committees in a manner that ensures proportionate minority representation on such bodies.[12] As a statutory scheme enacted in the public interest, section 760.80, Florida Statutes, is entitled to a liberal construction favoring a construction which would accomplish its purpose.[13]

Part I, Chapter 282, Florida Statutes, is entitled the "Enterprise Information Technology Services

Management Act".[14] The Legislature's discussion of the purpose of the act is contained in section 282.201(1), Florida Statutes:

"The Legislature finds that the most efficient and effective means of providing quality utility data processing services to state agencies requires that computing resources be concentrated in quality facilities that provide the proper security, infrastructure, and staff resources to ensure that the state's data is maintained reliably and safely, and is recoverable in the event of a disaster. Efficiencies resulting from such consolidation include the increased ability to leverage technological expertise and hardware and software capabilities; increased savings through consolidated purchasing decisions; and the enhanced ability to deploy technology improvements and implement new policies consistently throughout the consolidated organization. Unless otherwise exempt by law, it is the intent of the Legislature that all agency data centers and computing facilities be consolidated into a primary data center by 2019."

To facilitate the provision of data processing services to state agencies, a state data center system is created that includes all primary data centers, other nonprimary data centers, and computing facilities. This service is designed to provide an "enterprise information technology service."[15]

The Northwood Shared Resource Center and the Southwood Shared Resource Center (the "centers") are created in Part I, Ch. 282, Florida Statutes, to facilitate the provision of data processing services to state agencies. Both centers are primary data centers created pursuant to section 282.203, Florida Statutes. For purposes of the act, a "[p]rimary data center" is defined to mean "a data center that is a recipient entity for consolidation of nonprimary data centers and computing facilities and that is established by law."[16]

The statutes creating both centers provide that each is "an agency established within the Department of Management Services for administrative purposes only."[17] Both sections 282.204 (Northwood Shared Resource Center) and 282.205 (Southwood Shared Resource Center) contain substantially similar enabling language:

"(1) The center is a primary data center and *is a separate budget entity that is not subject to control, supervision, or direction of the department in any manner*, including, but not limited to, purchasing, transactions involving real or personal property, personnel, or budgetary matters. (2) *The center shall be headed by a board of trustees* as provided in s. 282.203, who shall comply with all requirements of that section related to the operation of the center and with the rules of the Agency for Enterprise Information Technology related to the design and delivery of enterprise information technology services."[18] (e.s.)

Each primary data center is headed by a board of trustees as defined in section 20.03, Florida Statutes. That statutory section provides:

"'Board of trustees,' . . . means a board created by specific statutory enactment and appointed to function adjunctively to a department, the Governor, or the Executive Office of the Governor to administer public property or a public program."[19]

The duties of the board are statutorily prescribed and include the employment of an executive

director to handle the day-to-day operations of the primary data center; establishment of budgeting, accounting, and operating procedures; providing customer entities with information concerning plans for service requirements; approving a portfolio of services offered by the data center; coordination with other primary data centers to consolidate purchases of goods and services to lower costs; and to contract with other primary data centers or with the agency within which the primary data center is housed to provide administrative services.[20] In the absence of legislative clarification as to the scope of section 760.80, Florida Statutes, and the entities subject thereto, I cannot state that the boards of trustees of primary data centers do not constitute decisionmaking boards that would come within the scope of section 760.80, Florida Statutes.

The members of the boards of trustees of primary data centers are appointed by the agency head or chief executive officer of the representative customer entities of the primary data center and serve at the pleasure of the appointing customer entity.[21] However, "[a] single trustee . . . shall represent those customer entitles that represent less than 4 percent of the total usage. The trustee shall be selected by a process determined by the board."[22] Bylaws of the Southwood Shared Resource Center and the Northwood Shared Resource Center provide that this at-large position is selected by the other trustees.[23] Thus, the boards of trustees of these primary data centers are the appointing authorities for the "at-large" trustee of the primary data centers.

Primary data centers are designated "agencies" for purposes of accomplishing limited statutorily specific duties. A review of the duties and responsibilities of the boards of trustees of primary data centers suggests that the boards of trustees act as decisionmaking and regulatory bodies for purposes of section 282.203, Florida Statutes, and would fall within the intent of the Legislature to cover "boards of trustees" subject to section 760.80, Florida Statutes. As the appointing authority of a trustee pursuant to section 282.203(2)(a)4.e., Florida Statutes, the boards of trustees would be subject to the reporting requirements of section 760.80(4), Florida Statutes, for that trustee as are the other appointing authorities for the other trustees of the Northwood and Southwood Shared Resource Centers.

Thus, it is my opinion that the board of trustees of the Northwood and Southwood Shared Resource Centers are "appointing authorities" within the scope of section 760.80(4), Florida Statutes, for purposes of the trustee each of these boards selects. In light of this conclusion, the boards of directors of the Northwood Shared Resource Center and the Southwood Shared Resource Center are subject to the reporting requirements of section 760.80, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 760.80(1), Fla. Stat.

[2] Section 760.80(2)(a) - (e), Fla. Stat.

[3] *See* Senate Staff Analysis and Economic Impact Statement for CS/SB 340, dated February 2, 1994.

[4] *Id.*

[5] Section 760.80(3), Fla. Stat.

[6] *Supra* at n.5.

[7] *Id.*

[8] Section 760.80(4), Fla. Stat.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See* Summary, Senate Staff Analysis and Economic Impact Statement for CS/SB 340, dated February 2, 1994.

[13] *See Department of Environmental Regulation v. Goldring*, 477 So. 2d 532 (Fla. 1985); *Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977) (statutes enacted for public benefit, such as public meetings or records laws, should be construed liberally in favor of the public).

[14] Section 282.003, Fla. Stat.

[15] "Enterprise information technology service" is defined in s. 282.0041(11), Fla. Stat., to mean "an information technology service that is used in all agencies or a subset of agencies and is established in law to be designed, delivered, and managed at the enterprise level."

[16] Section 282.0041(17), Fla. Stat.

[17] *See* ss. 282.204 and 282.205, Fla. Stat.

[18] Section 282.204, Fla. Stat.

[19] Section 282.203(12), Fla. Stat.

[20] Section 282.203(3)(a)-(l), Fla. Stat.

[21] Section 282.203(2)(a), Fla. Stat.

[22] Section 282.203(2)(a)4.e., Fla. Stat.

[23] *See* Art. I, s. 101(b), Southwood Shared Resource Center Bylaws, and s. 2.2.1, Northwood Shared Resource Center Bylaws.